

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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LAWRENCE P. ORGAN	)	
	)	
Plaintiff,	)	
	)	No. 1:05-cv-00867-JJF
v.	)	
	)	
MARC BYRON, BEN KAAK, and	)	
CATHERINE BARBARO	)	
	)	
Defendants.	)	
	)	

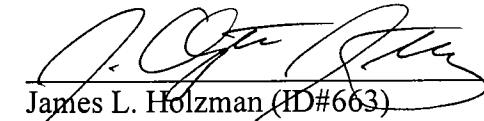
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**MOTION TO DISMISS**

Pursuant to Fed. R. Civ. P. 12(b)(6), the Defendants Marc Byron, Ben Kaak and Catherine Barbaro (“Defendants”) hereby move to dismiss the Complaint in this action in its entirety, with prejudice, and submit herewith a Memorandum of Law in support of the motion. As set forth therein, Plaintiff’s Complaint, which alleges only a claim under the Illinois Securities Law of 1953, must be dismissed because of an enforceable choice of law provision requiring Plaintiff to bring his claims under Delaware law. In addition, the Complaint should be dismissed with prejudice because any amendment under Delaware law would be futile as time barred and barred by the express terms of the Merger Agreement signed by the Plaintiff.

WHEREFORE, Defendants pray the Court to dismiss Plaintiff's Complaint, with prejudice.

PRICKETT, JONES & ELLIOTT, P.A.



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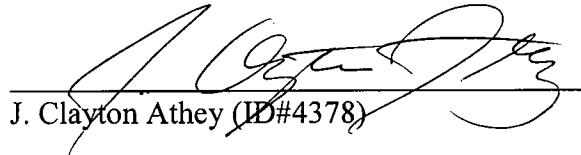
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Dated: February 21, 2006

**CERTIFICATE OF SERVICE**

I, J. Clayton Athey, hereby certify that on this 21<sup>st</sup> day of February, 2006, I caused a copy of the foregoing MOTION TO DISMISS to be served on counsel for the parties via e-file:

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